

## **First Judicial District of Pennsylvania**

*51CR00047732011*

*Johnnie Simmons*

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*Trial (Jury) Volume 4  
December 14, 2011*



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*First Judicial District of Pennsylvania  
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Philadelphia, PA 19110  
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[1] IN THE COURT OF COMMON PLEAS  
[2] FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
[3] CRIMINAL TRIAL DIVISION  
[4] ---  
[5]  
[6] COMMONWEALTH : CP-51-CR-0004773-2011  
[7] :  
[8] V. :  
[9] :  
[10] JOHNNIE SIMMONS :  
[11] :  
[12] ---  
[13] Courtroom 802, Criminal Justice Center  
[14] Philadelphia, Pennsylvania  
[15] ---  
[16] December 14, 2011  
[17] ---  
[18] Jury Trial  
[19] Volume V  
[20] ---  
[21] B E F O R E: THE HONORABLE SANDY L. V. BYRD, J.  
[22] **APPEARANCES:**  
[23] STACY FORCHETTI, ESQUIRE  
[24] Assistant District Attorney  
[25] For the Commonwealth  
  
[26] VINCENT LORUSSO, ESQUIRE  
[27] Counsel for the Defendant  
[28] Jaclyne Wilson

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[1] actually statement or information apparently from  
[2] the witness, Michael Bell, who did not testify in  
[3] this case.  
[4] **THE COURT:** Commonwealth?  
[5] **MS. FORCHETTI:** Your Honor, the document  
[6] they're asking for technically doesn't even exist.  
[7] I would agree with Mr. Lorusso that they can't have  
[8] Officer Edmiston's prepared 48.  
[9] **THE COURT:** Tell me if either of you have  
[10] an objection to this comment to the jury regarding  
[11] Question No. 2. I propose to tell them the that  
[12] 75-48 A report by Officer Edmiston regarding Michael  
[13] Bell constitutes inadmissible hearsay as Mr. Bell  
[14] did not testify. Further, the rules of court  
[15] prohibit the jury from being provided that document  
[16] during deliberations.  
[17] **MS. FORCHETTI:** Your Honor, my objection  
[18] to it would be first of all that Officer Edmiston  
[19] did not prepare a 48 A. He only prepared a 75-48.  
[20] **THE COURT:** And what else?  
[21] **MS. FORCHETTI:** And I would just ask that  
[22] you just say that the police paperwork cannot go  
[23] back to them.  
[24] **THE COURT:** Mr. Lorusso?  
[25] **MR. LORUSSO:** Your Honor, I have honestly  
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[1] **THE COURT:** This is the Commonwealth vs.  
[2] Johnnie Simmons, CP-51-CR-0004773-2011. Mr. Simmons  
[3] is here with his attorney, Mr. Lorusso. The  
[4] Commonwealth by Ms. Forchetti.  
[5] Counsel, as I told the two of you off the  
[6] record, there is a question, rather two questions,  
[7] from the jury. I'm going to read the questions to  
[8] you on the record and have the two of you respond,  
[9] tell me how you wish me to answer the jurors'  
[10] questions.  
[11] Your Honor, we the jury have the  
[12] **following questions:** One, may we have the 4/26/11  
[13] preliminary hearing testimony of Mr. Talbert reread  
[14] to us?  
[15] And, two, may we have Officer Edmiston's  
[16] report in reference to Michael Bell, slash, 75-483  
[17] **A**, pedestrian stop? Signed, Juror No. 8.  
[18] What I'm going to do, Mr. Lorusso, is to  
[19] hear first from you and I'll take them in the  
[20] inverted fashion. Let's address Question No. 2  
[21] first. It says, May we have Edmiston's report  
[22] regarding Bell. What's your position?  
[23] **MR. LORUSSO:** My position would be that  
[24] Your Honor should not allow that to go to the jury.  
[25] It -- well, it's a police report. It also contains  
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[1] no problem either way there. If Your Honor --  
[2] **THE COURT:** You just don't want it to go  
[3] back?  
[4] **MR. LORUSSO:** Correct.  
[5] **THE COURT:** Okay. Understood.  
[6] Second, I shall read to you the first  
[7] question and ask -- and I'll have you answer first,  
[8] Ms. Forchetti. May we have the preliminary hearing  
[9] testimony of the complainant?  
[10] **MS. FORCHETTI:** Your Honor, I believe  
[11] that's an appropriate request. I would ask that you  
[12] accommodate their request.  
[13] **THE COURT:** Mr. Lorusso?  
[14] **MR. LORUSSO:** Your Honor, I would object  
[15] to that because of the fact that the nature of the  
[16] preliminary hearing was such that it did not allow a  
[17] full cross-examination or confrontation of the  
[18] witness. So to present just that side basically of  
[19] direct testimony would give undue weight to a  
[20] statement that was without any test or without any  
[21] cross-examination.  
[22] Also, though appreciating that if Your  
[23] Honor is inclined to do that, I would ask to -- if  
[24] Your Honor is inclined to allow that testimony to be  
[25] read back, I would ask that it be read back in the  
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[1] context of the testimony and I'm assuming that  
[2] that's what we'd be doing that was presented at  
[3] trial not just the raw reading of the notes of  
[4] testimony but Ms. Forchetti's questioning and  
[5] Mr. Talbert's responses to those questions at the  
[6] trial because that would be, I would think, the  
[7] evidence.  
[8] **THE COURT:** Ms. Forchetti?  
[9] **MS. FORCHETTI:** Your Honor, I think it  
[10] would be cleaner just to read the testimony as it  
[11] stood as you had told the jury that they may  
[12] consider these notes as suggestive of evidence.  
[13] That's what they asked for is specifically --  
[14] **THE COURT:** They're not entitled to notes  
[15] of testimony. The only reason they're entitled to  
[16] this is because you introduced it in your case in  
[17] chief. And the only way it comes in would be  
[18] through your questions and his responses.  
[19] **MS. FORCHETTI:** Okay.  
[20] **THE COURT:** It's obviously not as clean  
[21] as the preliminary hearing testimony because he was,  
[22] it appeared to me, cooperative with the Commonwealth  
[23] at the preliminary hearing and not cooperative with  
[24] the Commonwealth at the trial. But they're not  
[25] entitled to a sanitized version of the notes of the  
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[1] "QUESTION: Okay. That was the end of  
[2] your testimony on April 26th of 2011, that ended the  
[3] preliminary hearing. You don't remember a single  
[4] word of it?  
[5] "ANSWER: No, I don't."  
[6] **THE COURT:** All right. Our reporter has  
[7] identified that portion of the examination which is  
[8] relevant and admissible pursuant to the jurors'  
[9] questions so I will permit it. It commences on page  
[10] 159 and ends on page 178. All right.  
[11] Counsel, ready yourself. We're about to  
[12] bring the jurors in  
[13] (Pause.)  
[14] **THE COURT:** Counsel, let the record  
[15] reflect that while we were awaiting our reporter to  
[16] isolate that portion of the transcript requested by  
[17] this jury, they have presented yet another question.  
[18] **It reads as follows:** Please clarify if defense is  
[19] legally required to turn over Mr. Talbert's letter  
[20] to the prosecution. Signed, Juror No. 8.  
[21] We can go off the record so you can let  
[22] that sink in and think about how you wish me to  
[23] respond.  
[24] (Off the record.)  
[25] **THE COURT:** Ladies and gentlemen, we're  
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[1] preliminary hearing. They're entitled to what was  
[2] presented to them at the trial.  
[3] **MS. FORCHETTI:** Okay.  
[4] **THE COURT:** So is that how,  
[5] Ms. Craighead, it has been identified by you?  
[6] **COURT REPORTER:** Yes, Your Honor.  
[7] **THE COURT:** Tell me the first -- where it  
[8] starts.  
[9] **COURT REPORTER:** "MS. FORCHETTI: Your  
[10] Honor, I would ask to mark the notes of testimony as  
[11] Commonwealth C-11?  
[12] "THE COURT: They may be marked.  
[13] "QUESTION: Now back in April of this  
[14] year, 2011, it was me as the district attorney and  
[15] Mr. Fiore as the defense attorney. Do you remember  
[16] that?  
[17] "ANSWER: No."  
[18] **THE COURT:** All right. So that's where  
[19] we'll start. What's the last bit of that  
[20] examination?  
[21] **COURT REPORTER:** "QUESTION: And do you  
[22] remember what the description was? If you don't,  
[23] that's okay. And your answer was, Light-skinned,  
[24] braids. Do you remember that?  
[25] "ANSWER: No.  
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[1] about to bring the jurors out.  
[2] (Jury enters the courtroom at 11:42 a.m.)  
[3] **THE COURT:** Good morning, ladies and  
[4] gentlemen.  
[5] Would the foreperson please rise and  
[6] identify yourself by seat number.  
[7] **JUROR FOREPERSON:** Juror No. 8,  
[8] Your Honor.  
[9] **THE COURT:** Mr. Foreman, does the jury  
[10] have communications and/or questions for the Court?  
[11] **JUROR FOREPERSON:** We do, Your Honor. We  
[12] have three.  
[13] **THE COURT:** Would you start -- I ask  
[14] again you read them exactly as they appear in your  
[15] writing.  
[16] **JUROR FOREPERSON:** Yes, Your Honor.  
[17] Number 1, may we have the April 26th,  
[18] 2011, preliminary hearing testimony of Mr. Talbert  
[19] reread to us?  
[20] Number 2, may we have Officer Edmiston's  
[21] report in reference to Michael Bell, slash, 75-483  
[22] A, pedestrian stop?  
[23] And then lastly, Your Honor, please  
[24] clarify is defense legally required to turn  
[25] Mr. Talbert's letter over to the prosecution.  
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[1] **THE COURT:** Thank you.  
[2] **JUROR FOREPERSON:** Thank you, Your Honor.  
[3] **THE COURT:** Ladies and gentlemen, it's  
[4] important that we all appreciate the various roles  
[5] assigned to each of us. The Commonwealth's attorney  
[6] has an obligation to present evidence in an effort  
[7] to prove guilt beyond a reasonable doubt. Defense  
[8] counsel's role is to defend his client against the  
[9] Commonwealth's effort to prove his guilt in  
[10] accordance with the law. You, ladies and gentlemen  
[11] of the jury, are fact finders. Your role is to  
[12] determine from the evidence presented what the facts  
[13] are. You have an obligation once you determine the  
[14] facts to apply the law as I instruct you in the law  
[15] to those facts and then decide whether the  
[16] Commonwealth has or has not proven guilt beyond a  
[17] reasonable doubt. My duty, as I articulated in  
[18] redefining yours, is to be the arbiter of the law.  
[19] It's my responsibility as the presiding judge to  
[20] instruct you in the law of this case.  
[21] Taking your questions in reverse order.  
[22] I must tell you that the question has absolutely  
[23] nothing to do with your role as fact finders.  
[24] Whether or not the letter from Mr. Talbert was  
[25] turned over by the defense to the Commonwealth  
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[1] entitled to testimony of a witness from a  
[2] preliminary hearing. However, in this case where  
[3] Charles Talbert's preliminary hearing testimony was  
[4] presented to you during this trial, our court's  
[5] permit the reporter to isolate that testimony and to  
[6] read it back to you. That is properly before you  
[7] and we shall have it read back.  
[8] So if you would be so patient as to give  
[9] our reporter an opportunity. She has isolated it.  
[10] She will now read back to you that portion which  
[11] you've asked for and it's, approximately, 19 to 20  
[12] pages. Bear with us for a moment and when she's  
[13] ready, she will commence the read back.  
[14] (Court reporter read the testimony of  
[15] Charles Talbert from 12/6/11 from page 125, Line 13  
[16] to page 148, Line 9 as requested.)  
[17] **THE COURT:** Ladies and gentlemen, we have  
[18] caused our reporter to read back that portion of the  
[19] testimony you requested. I now request that the 12  
[20] of you return to the jury room and resume your  
[21] deliberations. Please be advised that if there is  
[22] an additional question or if you have additional  
[23] requests, don't hesitate to call on the Court.  
[24] Thank you.  
[25] (Jury exits the courtroom at 12:15 p.m.)  
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[1] pursuant to a legal obligation is totally outside  
[2] the jury's proper consideration. You should set  
[3] aside the evaluation of matters peripheral to your  
[4] duty as the fact finder and address yourself to the  
[5] evidence that was presented in this courtroom.  
[6] Neither side can now supplement the record. Neither  
[7] side can present additional evidence assuming there  
[8] is any additional evidence. The evidence in this  
[9] case is closed and your obligation is to determine  
[10] from that evidence the facts, apply the law to those  
[11] facts and then make a decision as to whether the  
[12] Commonwealth has or has not proven guilt beyond a  
[13] reasonable doubt.  
[14] That brings me to the second question.  
[15] There are rules which govern what can and cannot  
[16] come before a jury and one of the rules is that you  
[17] may not have that document in the jury room during  
[18] your deliberations. Your obligation is to  
[19] collectively recall the evidence that was before you  
[20] and to determine the facts from that evidence. You  
[21] may not have a 75-48, 75-48 A, 75-483. The rules  
[22] prohibit it and I have an obligation to enforce the  
[23] rules.  
[24] The very first question you asked should  
[25] **be answered thusly:** Generally, a jury is not  
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[1] **THE COURT:** Let the record reflect the  
[2] jurors have left the room.  
[3] Is there anything else, Ms. Forchetti?  
[4] **MS. FORCHETTI:** No, Your Honor.  
[5] **THE COURT:** Mr. Lorusso?  
[6] **MR. LORUSSO:** No, Your Honor.  
[7] **THE COURT:** Thank you, sir. Thank you,  
[8] ma'am.  
[9] (Deliberations.)  
[10] **THE COURT:** All right. We're back on the  
[11] record. Mr. Simmons is here with his attorney,  
[12] Mr. Lorusso. The Commonwealth by Ms. Forchetti.  
[13] There is a new question, counsel. It  
[14] reads, May we please have Officer Edmiston's  
[15] testimony read to us.  
[16] It's my recollection Officer Edmiston was  
[17] the first officer on the scene.  
[18] **MS. FORCHETTI:** That is correct.  
[19] **THE COURT:** And that he broadcast some  
[20] initial flash. That there is a lack of clarity as  
[21] to where or who the source of that flash is or was.  
[22] Is that right, Ms. Forchetti?  
[23] **MS. FORCHETTI:** That is my recollection,  
[24] Your Honor.  
[25] **THE COURT:** Mr. Lorusso, what's your  
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[1] position as to how we proceed?  
[2] **MR. LORUSSO:** My position is Your Honor  
[3] direct the jury to rely on their recollection of the  
[4] evidence.

[5] **THE COURT:** Ms. Forchetti?

[6] **MS. FORCHETTI:** Your Honor, I would  
[7] agree.

[8] **THE COURT:** All right. Thank you, ma'am.  
[9] Let's bring the jurors out.

[10] (Jury enters the courtroom at 2:23 p.m.)

[11] **THE COURT:** Good afternoon, ladies and  
[12] gentlemen.

[13] Will the foreperson please rise and  
[14] identify yourself by seat number.

[15] **JUROR FOREPERSON:** Juror No. 8,  
[16] Your Honor.

[17] **THE COURT:** Mr. Foreman, does the jury  
[18] have a communication for the Court?

[19] **JUROR FOREPERSON:** We do, Your Honor.

[20] **THE COURT:** Would you read it as it  
[21] appears in your writing, sir.

[22] **JUROR FOREPERSON:** Yes, Your Honor. May  
[23] we please have Officer Edmiston's testimony read to  
[24] us?

[25] **THE COURT:** Thank you.  
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[1] prorating that for your time off due to jury duty as  
[2] you should not be penalized for fulfilling your  
[3] responsibilities as a citizen but, again, three new  
[4] deals is the minimum. So you should strive to hit  
[5] that number in the days you are able to work during  
[6] the month. We can discuss more once your jury duty  
[7] wraps up and we know exactly how many days you were  
[8] off. Company policy allows as many days off  
[9] necessary to fulfill your jury duty obligation.  
[10] There is an option in eTime to code those days off  
[11] as jury did you. I believe Jim is already aware of  
[12] your jury duty obligation, so if you are unable to  
[13] update your eTime, please make sure he knows so he  
[14] can update on your behalf.

[15] Once you have completed jury duty, please  
[16] make sure to fax or scan a copy of the certificate  
[17] to HR for our records. Thanks, Terri.

[18] This is the woman who I believe initially  
[19] said jury duty would be a hardship because her  
[20] obligation to work. She then changed it and I  
[21] declined to grant her hardship. She submitted this  
[22] to Mr. Menna to give to me today. I initially  
[23] thought that perhaps I should contact the employer  
[24] but given the language of this letter, the employer  
[25] is not putting any undue pressure on her so I don't

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[1] **JUROR FOREPERSON:** Thank you, Your Honor.

[2] **THE COURT:** Ladies and gentlemen, this  
[3] was a fairly short trial in terms of its duration.  
[4] My recollection is that testimony consumed,  
[5] approximately, two working days. I'm mindful of the  
[6] fact that there was a hiatus. We were unable to  
[7] meet on Thursday and Friday because of circumstances  
[8] outside the control of the principles, but you,  
[9] ladies and gentlemen, gave the case your full  
[10] attention. You were all permitted to take notes.

[11] In light of everything I've said, you  
[12] ladies and gentlemen, must, you are obliged to rely  
[13] upon your recollection of the evidence. Please, do  
[14] so and continue your deliberations.

[15] Thank you.

[16] (Jury exits the courtroom at 2:25 p.m.)

[17] (Deliberations.)

[18] **THE COURT:** Counsel, I'm going to read to  
[19] you an e-mail that was handed to me by Mr. Menna on  
[20] behalf of one of your jurors. I have taken no  
[21] actions. Nor do I intend to.

[22] It is addressed to Allie Ramsey, account  
[23] executive from Terri Fornek it reads: Hi Allie, as  
[24] it relates to your productivity, the minimum is  
[25] three new deals and we will, of course, consider

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[1] think there is anything to do. But in an abundance  
[2] of caution, I thought I should share it, and I have.

[3] Anything?

[4] **MR. LORUSSO:** I have nothing.

[5] **MS. FORCHETTI:** Thank you, Your Honor.  
[6] (Deliberations.)

[7] **THE COURT:** We are back on the record. I  
[8] have a note from the jury. Before I read it, let  
[9] the record reflect Mr. Simmons is here with his  
[10] attorney, Mr. Lorusso. And Ms. Forchetti is here  
[11] for the Commonwealth.

[12] **The note reads:** Your Honor, due to the  
[13] lateness of the hour, we would like to adjourn for  
[14] the day and begin first thing tomorrow morning on  
[15] Thursday. Signed, Juror No. 8.

[16] Any objection, counsel?

[17] **MR. LORUSSO:** No, Your Honor.

[18] **MS. FORCHETTI:** No, Your Honor.

[19] **THE COURT:** Okay. Let's bring them out.  
[20] I'll release them from the box.

[21] (Jury enters the courtroom at 4:07 p.m.)

[22] **THE COURT:** Good afternoon, ladies and  
[23] gentlemen.

[24] Mr. Foreperson, would you please rise and  
[25] identify yourself by seat number.

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[1] JUROR FOREPERSON: Juror No. 8,  
[2] Your Honor.  
[3] THE COURT: Do you have a communication  
[4] for the Court, sir?  
[5] THE DEFENDANT: We do, Your Honor.  
[6] THE COURT: Would you please read it.  
[7] JUROR FOREPERSON: Due to the lateness of  
[8] the hour, we would like to adjourn for the day and  
[9] begin first thing tomorrow on Thursday.  
[10] THE COURT: Thank you.  
[11] JUROR FOREPERSON: Thank you, Your Honor.  
[12] THE COURT: Your request is granted. We  
[13] will recess now and commence tomorrow morning at  
[14] nine o'clock. I'm obliged to remind you all with  
[15] the following instructions: Keep an open mind.  
[16] Don't discuss the case amongst yourselves. Please  
[17] don't permit anyone to discuss the case with you.  
[18] Enjoy your evening. We'll see you all back here  
[19] tomorrow morning. We'll commence at nine o'clock.  
[20] (Jury exits the courtroom at 4:09 p.m.)  
[21] (Hearing adjourned at 4:13 p.m.)  
[22]  
[23]  
[24]  
[25]

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[1] CERTIFICATE  
[2]  
[3] I HEREBY CERTIFY THAT THE PROCEEDINGS AND EVIDENCE  
[4] ARE CONTAINED FULLY AND ACCURATELY IN THE NOTES  
[5] TAKEN BY ME ON THE TRIAL OF THE ABOVE CAUSE, AND  
[6] THIS COPY IS A CORRECT TRANSCRIPT OF THE SAME  
[7]  
[8]  
[9]  
[10]  
[11] JACLYNE A. CRAIGHEAD  
[12] OFFICIAL COURT REPORTER  
[13]  
[14]  
[15]  
[16]  
[17] (THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES  
[18] NOT APPLY TO ANY REPRODUCTION OF THE SAME BY ANY  
[19] MEANS UNLESS UNDER THE DIRECT CONTROL AND/OR  
[20] SUPERVISION OF THE CERTIFYING REPORTER.)  
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